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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,513	03/12/2004	Robert Ganley	1034497-000120	2375
21839 7590 08/07/2007 BUCHANAN, INGERSOLL & ROONEY PC POST OFFICE BOX 1404 ALEXANDRIA, VA 22313-1404			EXAMINER WILSON, JOHN J	
			ART UNIT 3732	PAPER NUMBER
			MAIL DATE 08/07/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary

Application No.

10/799,513

Applicant(s)

GANLEY, ROBERT

Examiner

John J. Wilson

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --.

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Final Rejection Withdrawn

New art has been found that requires the withdrawal of the Final Rejection of August 2, 2006.

Further, the Final is being withdrawn because it is directed to an amendment that is improper and is not being entered into this application. On April 24, 2006, an amendment was filed that was signed by Scott W Cummings, however, at the time the amendment was filed, Mr. Cummings did not have power of attorney in this case, as such, the amendment was not properly signed. A power of attorney for Mr. Cummings was filed on May 16, 2006 and accepted on June 6, 2006, however, this cannot be retroactively applied to papers filed before this. A second amendment was filed on May 3, 2006, along with a six month extension of time, and signed by a person with power of attorney at the time this amendment was filed, and as such, this amendment is entered and is timely.

For the reasons given above, the Final Rejection of August 2, 2006 is withdrawn, and an action on the merits of the claims as amended on May 3, 2006 follows.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 7-11 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. In claim 7, line 2, "fixed within a patient's jaw" is improperly claiming applicant's invention in combination with human anatomy.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brodbeck (2002/0160334) in view of Pozzi (5261815). Brodbeck shows an abutment 43, Fig. 4, core 44 and cuff 45 having the same color as prosthesis 3, [0011], [0020-0021] and [0027]. Brodbeck does not show that the cuff having a color in accordance with a dental shade guide. Pozzi teaches choosing a crown color in accordance with a shade guide. It would be obvious to one of ordinary skill in the art to modify Brodbeck to include a crown color in accordance with a shade guide as shown by Pozzi in order to make use of a well known method in the art for matching color. Because Brodbeck teaches choosing a cuff color in accordance with the crown, it is obvious that the cuff is also in accordance with a dental shade guide. As to claim 2, see metal core 44 [0027]. Claim 3, see titanium [0020], claim 4, see ceramic cuff 45 [0027], claims 5 and 6, see creaming cuff and crown [0044] and as to claim 7, see dental prosthesis 3.

Response to Arguments

Applicant's arguments filed May 31, 2007 have been fully considered but they are not persuasive. Applicant's remarks are moot for the reasons given above.

The action is non-final giving applicant the opportunity to refile the amendment of April 24, 2006, or another amendment in view of the newly cited art.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Wilson whose telephone number is 571-272-4722. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez, can be reached at 571-272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3732

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

***/John J Wilson/
Primary Examiner
Art Unit 3732***

jw
August 2, 2007